



(916) 445-6414

April 1, 1985

RE: Change In Control of a Corporation-Section 64(c)

Dear Mr. .

This is in response to your letter of February 15, 1985, in which you request our consideration of your interpretation of Revenue and Taxation Code Section 64(c) with regard to the following facts:

X Corporation, whose stock is publicly traded, has substantial real estate assets in the State of California. Slightly less than 50% of the outstanding shares of X Corporation are owned by A Corporation.

X Corporation has granted options to purchase a substantial number of shares of its Common Stock which, when exercised, will in the judgment of management result in dilution of the presently outstanding stock holdings of X Corporation. To avoid this result, management wishes now to buy in shares of the Company to cover presently outstanding options and hereafter to buy in shares to cover options as they may from time to time be granted in the future. This program will avoid dilution both of the voting power and book value of outstanding shares; it will create a theoretical pool of shares purchased at current prices which can be drawn upon to cover options at the time they are exercised.

Because shares are automatically retired at the time of repurchase by the Company, however, the foregoing program would reduce the number of outstanding shares and thereby increase the percentage of outstanding shares owned by remaining shareholders including A Corporation. This would have the effect of increasing the percentage ownership of A Corporation above 50% even though A Corporation has done nothing to increase its holdings in X Corporation.

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Revenue and Taxation Code Section 64(c) provides:
 "When a corporation, partnership, other legal entity or any other person obtains control, as defined in Section 25105, in any corporation, or obtains a majority ownership interest in any partnership or other legal entity through the purchase or transfer of corporate stock, partnership interest, or ownership interest in other legal entities, such purchase or transfer of such stock or other interest shall be a change of ownership of property owned by the corporation, partnership or other legal entity in which the controlling interest is obtained."

You argue that in the situation described above, "A" corporation would not have obtained control "through the purchase or transfer of corporate stock, partnership interest, or ownership interest in other legal entities...." You contend that there must be an intent to take control on the part of the part of the corporation acquiring control. If "A" corporation obtains control of "X" corporation only through the action of "X" corporation and not as a result of "A's" own action, you argue that there should be no change of ownership.

Revenue and Taxation Code Section 64(c) states that when a corporation, partnership, or other legal entity or any other person obtains control of a corporation as defined in Section 25105, there is a change in ownership. Section 25105 provides that direct or indirect ownership or control of more than 50 percent of the voting stock of the taxpayer constitutes ownership or control. Under Section 25105, direct or indirect ownership of more than 50 percent of the voting stock in itself constitutes control. There is no requirement that the corporation obtaining control must acquire the stock itself. A court should not add to the words of a statute to accomplish a purpose that does not appear on the face of the statute if the words of the statute are clear; nor should the court seek hidden meanings not suggested by the statute. (*Rich v. State Board of Optometry*, 235 Cal.App. 2nd 591, 604 (1965).) Further, Section 64(c) states "or obtains a majority interest in any partnership or other legal entity through the purchase or transfer of corporate stock". Your interpretation ignores the word "or" which makes the words "purchase or transfer" a separate clause and applicable to "any partnership or other legal entity". While arguably the term "legal entity" could apply to corporations, the change in control of corporations was specifically dealt with in the preceding clause pertaining to Section 25105. A specific provision relating to a particular subject will govern with respect to that subject against a general provision, even though the general provision standing alone would be broad enough to include the subject. (*Rose v. State of California*, 19 Cal. 2d 713, 723-724 (1942).) In addition, the statute refers to "the" purchase of stock. Again, there is no requirement that the person or entity obtaining control actually purchase the stock itself, nor is there a requirement of intent to obtain control.

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Therefore, neither requirement should be implied. (Rich v. State Board of Optometry, supra.) To accept your interpretation of Section 64(c) would change the plain meaning of the statute. It is, therefore, our opinion that the situation which you describe would constitute a change of ownership under the plain words of Section 64(c).

Very truly yours,

Michele F. Hicks
Tax Counsel

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